

September 3, 2014

Jeffrey A. Mitchell
West Sacramento City Attorney
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-14-124(a)

Dear Mr. Mitchell:

This letter responds to your request for additional advice under the conflict of interest provisions of the Political Reform Act (the “Act”)¹ as a follow-up to the *Mitchell* Advice Letter, No. A-14-124, dated August 5, 2014. You make the request on behalf of Martin Tuttle, City Manager for the City of West Sacramento. Please note that we are only providing advice under the conflict of interest provisions of the Act. This letter does not provide advice under Government Code Section 1090 or common law conflict of interest. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), meaning that any advice we provide assumes the facts the requester provides to us are accurate. If this is not the case, then our advice could be different.

QUESTION

Does the Act’s “public generally” exception permit Mr. Tuttle, in his capacities as City Manager for the City of West Sacramento, Executive Director of the West Sacramento Redevelopment Successor Agency (“Successor Agency”) or Chief Executive Officer of the Sacramento-Yolo Port District (“Port”) to do the following:

(1) Renegotiate the terms of the Option with the Developer pursuant to the terms of the Successor Agency Oversight Board’s (“Oversight Board”) proposed July 2014 resolution and make recommendations to the Successor Agency concerning the Option?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

(2) Negotiate with the Developer regarding the terms of the assignment of the Option from the Port to the Developer and make recommendations to the Port concerning the Assignment?

(3) Participate in the negotiations of a development agreement for the Site and make recommendations concerning the development agreement to the City Council?

CONCLUSION

The facts provided support application of the Act's "public generally" exception to the proposed actions by Mr. Tuttle. Therefore, it is permissible for Mr. Tuttle, while acting in any of these official capacities, to do any of the following:

(1) Renegotiate the terms of the Option with the Developer pursuant to the terms of the Oversight Board's proposed July 2014 resolution or make recommendations to the Successor Agency concerning the Option.

(2) Negotiate with the Developer regarding the terms of the assignment of the Option from the Port to the Developer or make recommendations to the Port concerning the Assignment.

(3) Participate in the negotiations of a development agreement for the Site or make recommendations concerning the development agreement to the City Council.

FACTS

Mr. Tuttle has been City Manager of the City of West Sacramento since July 2012. By virtue of his position as City Manager, Mr. Tuttle serves as Executive Director of the West Sacramento Redevelopment Successor Agency ("Successor Agency") and Chief Executive Officer of the Sacramento-Yolo Port District ("Port"). The City, the Successor Agency, and the Port are distinct legal entities, but they are all run by City staff. The City Council serves as the Board of the Successor Agency, and four of the five members of the Port Board are City Council members.

The Stone Lock property (the "Site") is owned by the Successor Agency. The Site is comprised of six parcels which, taken together, total approximately 215 acres of undeveloped land situated east of Jefferson Boulevard, on the north and south side of the Barge Canal, and immediately north of existing residential neighborhoods. The City, Successor Agency and Port have been considering development of the Site (the "Site project"). Although still in the design stages, the project could have up to 2,500 housing units, 1.5 million square feet of office space, 890,000 square feet of retail space, and up to 800 hotel rooms at build out.

Mr. Tuttle owns and resides on property within 500 feet of the boundary of two of the parcels that are part of the Site. A privately-owned pipeline runs along the boundary between these two parcels pursuant to a license agreement approved in 1965. Because of the location of

the pipeline, the developable portion of one of these parcels is more than 500 feet from Mr. Tuttle's property.

In 2007, the West Sacramento Redevelopment Agency ("Agency") selected the Cordish Company (the "Developer") to purchase and develop the Site. Between 2007 and 2011, the Agency negotiated exclusively with the Developer on the terms of the sale for the Site. On March 29, 2011, the Agency and City approved a joint resolution directing the Agency's Executive Director to execute an option agreement ("Option") with the Port. The Port subsequently assigned the Option to the Developer via an assignment agreement ("Assignment"). The Option provides the holder of the Option with the right to purchase the Site under certain conditions. The Assignment establishes certain additional requirements that must be met before the Developer can exercise the Option.

The Developer's compliance with the terms of the Option Agreement and the Assignment Agreement is in dispute, and the Successor Agency Oversight Board ("Oversight Board") will be considering a resolution directing that the Successor Agency attempt to renegotiate the terms of the Option, including the Site's sale price. As Executive Director of the Successor Agency, Mr. Tuttle would typically play a critical role in these renegotiations. The resolution may further request that the Port (and by extension, Mr. Tuttle as Chief Executive Officer of the Port) accelerate the Developer's performance obligations under the Port's Assignment to the Developer.

Separate from the disputes discussed above, the Developer's right to exercise the Option is contingent on the Developer obtaining a development agreement from the City of West Sacramento (see Section 1.5.2 of the Option Agreement). Any development agreement must be approved by the City Council, and approval is entirely within the City Council's discretion. In his capacity as City Manager, Mr. Tuttle would typically be in charge of the team negotiating the terms of the development agreement on behalf of the City and making a recommendation to the City Council.

Based on these facts, we concluded in the *Mitchell* Advice Letter, No. A-14-124, that, because it was reasonably foreseeable that decisions to be made by the City, Successor Agency or Port would have a material financial effect on Mr. Tuttle's residence, the Act's conflict of interest provisions prohibited him from making, participating in making or using his official position to influence any of the agency decisions described in the Question above.

You have now provided information pertinent to the "public generally" exception to the Act's conflict of interest provisions. In addition to your cover letter, this information consists of a map of the portion of the City where the Site is located and showing the location of Mr. Tuttle's property in relation to the Site; a map of the City showing the location of the Site, all of the single family residences in the City (designated in yellow), and all of the single family residences (including Mr. Tuttle's) located within a quarter-mile of the boundaries of the Site (designated in green); and a letter from a real estate broker discussing the residential properties located within a quarter-mile of the Site and offering his opinion as to whether the development

of the Site will have a financial effect on these properties that is “substantially the same” as the financial effect on Mr. Tuttle’s property.

Among other things, this information provides that: (1) There are 13,380 residential properties in the City; (2) The Gateway, Arlington Oaks and State Streets/Westmore Oaks neighborhoods are located adjacent to the Site; (3) There are 1,638 residential properties located in these three neighborhoods (1,386 single family homes and 252 condominiums) that are within a quarter-mile radius of the Site’s boundary; and (4) Mr. Tuttle’s property is in the Gateway neighborhood and is one of the 1,638 residential properties within a quarter-mile radius of the Site’s boundary.

Because the Site project, at build-out, could have up to 2,500 housing units, 1.5 million square feet of office space, 890,000 square feet of retail space, and up to 800 hotel rooms, it is the opinion of the real estate broker that the magnitude of the development will have an effect on the real estate values of the single family residences located within the quarter-mile radius of the Site boundary and the effect would be substantially the same for all of these residences. The broker bases his opinion on the 13 factors set forth in Regulation 18707.1(b)(2)(A), which, as pertinent to these facts, includes consideration of: (1) The size and scope of the Site project; (2) The similarity of the value, lot size, house square-footage and residential street layout of Mr. Tuttle’s property to the other single family homes in this area; (3) The similar proximity of the single family residences in this area to the Site; and (4) The probable effects of any changes to Mr. Tuttle’s immediate neighborhood as a result of the Site project as compared to the immediate neighborhoods of other single family residences in this area.

ANALYSIS

As stated in our recent letter to you, we advised that because of the proximity of his home to the Site, Mr. Tuttle had a conflict of interest if he participated in decisions regarding the Site project. Your question asks us to address, based on the additional information submitted, whether the Act’s “public generally” exception applies and thus permits Mr. Tuttle to participate in these decisions.

The public generally exception is based in the first paragraph in Section 87103, which essentially states that even if it is reasonably foreseeable that a government decision will have a material financial effect on a public official’s financial interest, there is no interest, and thus the official has no conflict under Section 87100, if the financial effect of the decision is indistinguishable “from its effect on the public generally.”

The Commission has adopted several regulations to interpret and implement this rule. (See Regulations 18707 – 18707.10.) Of these, Regulation 18707.1 sets forth the basic “public generally” analysis and is relevant to your question. Under Regulation 18707.1, the analysis consists of two steps: (1) Determine whether the government decision will affect a “significant segment” of the public (Regulation 18707.1(b)(1)); and (2) Determine whether the government decision will financially affect the official’s interest in “substantially the same manner” as it will

affect the significant segment of the public identified in step 1. (Regulation 18707.1(b)(2).) Below, we discuss both of these steps in the context of the facts you have provided.

Will the government decisions on the Site project affect a significant segment of the public?

The decisions in issue here affect Mr. Tuttle's real property interest. Regulation 18707.1(b)(1)(B) addresses when a real property decision affecting an official's real property also affects a significant segment of the public. One situation addressed under the regulation is when the decision affects not only the official but also ten percent or more of all residential property owners in the official's jurisdiction.² (Regulation 18707.1(b)(1)(B)(i).) For purposes of making the ten percent determination, if the official counts him- or herself as the sole owner of the property, he or she may only count each of the other residential properties in the jurisdiction as also having only one owner. (Regulation 18707.1(b)(1)(B)(iii).) In that case, we would make the ten percent determination by determining how many residential properties there are in the jurisdiction and what number would constitute ten percent of those properties. Under the facts, Mr. Tuttle is counting himself as the sole owner of his residential property, so we must only count each of the other residential properties in the City as having one owner. Applying this methodology to the facts provided, there are 13,380 residential properties in the City, of which 1,638 are located within the Gateway (the location of Mr. Tuttle's residence), Arlington Oaks and State Streets/Westmore Oaks neighborhoods and also within a quarter-mile radius of the Site. Of the 1638 residential properties located in this area, 1386 are single family homes and 252 are condominiums. Thus, whether counting all the residences or just the single family homes in these three neighborhoods, the number of owners of these properties constitutes more than 10% of the residential properties in the City. This meets the regulation's "significant segment" test, so we proceed to the next step of the analysis.

Will the government decisions on the Site project financially affect Mr. Tuttle's real property in substantially the same manner as they will affect the identified significant segment of the public?

Regulation 18707.1(b)(2) addresses when a government decision affects the official's real property in substantially the same manner as it will affect a significant segment of the public. As is evident from its description, the effect need not be identical but only substantially the same. (*Ibid.*) Regulation 18707.1(b)(2)(A) states that, when determining the effects of a government decision on real property, we must look at "the overall dollar amount of the increase or decrease in the value of the property and not the percentage of the increase or decrease affecting property values as a whole." This provision then lists the following factors to consider in making this determination:

- (1) The magnitude of the financial effect of the governmental decision on the official's property as compared with other properties contained within the significant segment.

² Regulation 18707.1(b)(1)(B)(iv) defines "residential property" as "any real property that contains a single family home, or a multi-family structure of four units or fewer, or a sign lot, or a condominium unit."

- (2) The lot size of the official's property compared with other properties contained within the significant segment (e.g., one acre versus 10 acres).
- (3) The square footage of the building space of the property compared with the square footage of the building space of other properties contained within the significant segment.
- (4) The proximity of the official's property to the property that is the subject of the governmental decision compared with the proximity of other properties contained within the significant segment.
- (5) The number of units/parcels owned by the official compared to others in the significant segment.
- (6) The physical characteristics or permitted use of the property (i.e., historical, commercial, residential) as compared to other properties in the significant segment.
- (7) The location of the official's property compared with the location of other properties contained within the significant segment.
- (8) The neighborhood in which the official's property is located is comparable to the neighborhoods in which other properties contained within the significant segment are located.
- (9) The quality of the structure contained on the official's property compared with the quality of other structures contained on properties within the significant segment.
- (10) The current fair market value of the property as compared to other properties in the significant segment.
- (11) Improvements made to the official's property as compared with other properties contained within the significant segment.
- (12) The developmental potential or income producing potential of the real property in which the official has an economic interest compared with other properties contained within the significant segment.
- (13) The character of the effects on the neighborhood of the property in which the official has an economic interest including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood compared with the neighborhoods of other properties contained within the significant segment.

The real estate broker's opinion letter submitted with your letter is summarized in the facts above. It considered the 13 factors in Regulation 18707.1(b)(2)(A) and concluded that the

financial effect of the Site project on the residential properties comprising the significant segment of the public (that is, residential properties located in the Gateway, Arlington Oaks and State Streets/Westmore Oaks neighborhoods and also within a quarter-mile radius of the Site boundary) would be comparable to any financial effect on Mr. Tuttle's property. Mr. Tuttle's property is located in the Gateway neighborhood and within the quarter-mile radius and, as detailed in the facts, is substantially similar to other single family homes in the segment in location, lot size, house square-footage, residential street layout and proximity to the Site. Given these factors and the size and scope of the Site project, the broker's opinion, we believe, correctly concluded that the probable effects of any changes to Mr. Tuttle's immediate neighborhood and property value as a result of the Site development would be "substantially the same" as the effects on all of the other residences within this quarter-mile radius. Therefore, this meets the regulation's "substantially the same effect" test and, on that basis, the public generally exception would apply to Mr. Tuttle when he participates in the government decisions described above.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

SH:jgl